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KOFI KISSI DOMPERE
Petitioner,

v.

OFFICE OF TAX & REVENUE
Respondent

Case No.: TR-C-05-800037

FINAL ORDER

I. INTRODUCTION

This case arises under D.C. Official Code § 47-4401 and the Office of Administrative Hearings Establishment Act, D.C. Official Code § 1831.03(b)(7), as amended. On June 14, 2005, Petitioner, Kofi Kissi Dompere filed a Taxpayer's Protest of a Proposed Assessment with this administrative court ("OAH"). In his Protest, Petitioner requested a hearing to appeal a Notice of Proposed Assessment of Tax Deficiency ("Notice") issued by the District of Columbia Office of Tax and Revenue ("OTR" or "Government") on May 19, 2005. The Notice assessed an income tax deficiency of \$3,838 for tax year 2001.

A status conference was convened October 13, 2005, at which Petitioner, Mr. Dompere, appeared on his own behalf, and Mr. Edward Blick, Esq. appeared on behalf of Respondent. On March 27, 2006, the undersigned Administrative Law Judge granted Respondent's Motion for the Production of Documents pursuant to OAH Rule 2823.2. On April 26, 2006, Respondent filed a Motion to Dismiss for Failure to Comply with an Order of this Court, which was denied by this Court on June 27, 2006. Hearings were held in this matter July 11, 2006, September 20,

2006 and October 20, 2006. The September 20th hearing was continued to October 20, 2006 at the request of Respondent, to enable the parties to present closing statements. At the October 20th hearing, Petitioner appeared; however, Respondent failed to appear. Respondent was granted leave to file a written closing statement.

Based upon testimony of the witnesses at the above mentioned hearings, my evaluation of their credibility, and the exhibits admitted into evidence, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

On April 10, 2002, Petitioner filed his D-40 Individual Income Tax Return with the District of Columbia for tax year 2001.

Petitioner listed \$60,711 in wages (Respondent's Exhibit ("RX") 200) and \$3,580 in taxable interest (RX 200 and 203) on his tax return. Petitioner also claimed the following deductions:

Medical Expenses	\$9,801.36
Charitable Contributions	\$13,288.31
Job Expenses	\$7,443.80
Research Expenses	\$12,700
Loss from Business (Schedule C, Form 1040)	\$1,862
Supplemental Loss (Schedule E, Form 1040)	\$10,852
TOTAL	\$ 55,947.47

See RX 200, 201, 204 and 205. After taking his personal exemption, Petitioner arrived at a taxable income of \$4,127, claiming a refund of \$4,466 (RX 201). Upon review, OTR disallowed

all deductions claimed, except the amount claimed for Real Estate Taxes and Mortgage Interest (RX 222). OTR subsequently notified Petitioner he was liable for a tax deficiency in the amount of \$3,838 (RX 213).

A. Medical Expenses

Petitioner claimed a deduction in the amount of \$9,801.36 for medical expenses, which included the cost of prescription drugs, health/dental insurance, life insurance and health services (RX 202). He provided several receipts from CVS (Petitioner's Exhibits (PX) 118), check #3550 for LabCorp (PX 119), and check #3406, which is traceable to a Visa Bill containing a medical expenditure (PX 110 and 118). Tax Auditor, Michael Farinha determined Petitioner's medical expense deduction should be disallowed, as the amount substantiated was less than 7.5% of Petitioner's adjusted gross income (PX 120).

During the September 20th hearing, however, Respondent conceded to a partial deduction for the cost of health and dental insurance, as well as Petitioner's costs for prescription drugs, but not for life insurance expenses.

B. Non-Cash Charitable Contributions

Petitioner claimed a carryover from prior years of \$13,288 in gifts to charity (RX 202)¹. This figure was derived from out-of-pocket expenses incurred from a radio show he voluntarily produces. His claimed production costs include albums and CDs used in the program, parking, transportation, equipment, maintenance and interest on credit cards (RX 207). Petitioner did not donate the albums and CDs to the radio station, but instead depreciated the value of the portion of his collection used in the radio program, and took deductions based on the resulting values (RX 207). Petitioner did not provide any documentation substantiating the actual cost of the

¹ Petitioner gave a monetary donation of \$185 in addition to the carried over amount, for a total deduction of \$13,473.31 (Line 18, RX 202).

CDs when purchased. Additionally, Petitioner estimated the cost of parking, transportation, and maintenance, but did not provide any documentation to substantiate his claimed deductions.

Petitioner did provide various credit card statements showing interest accrual and cancelled checks paid to several credit card companies; however, none of these documents contain itemized costs or are matched with receipts pertaining to the production of Petitioner's radio program (PX 110, PX 118, PX 130 and RX 216).

C. Job Expenses and Miscellaneous Deductions

Petitioner claimed \$12,700 in research costs (RX 202). The Petitioner is employed as a professor at Howard University, where he has published 6 articles in compliance with his employment agreement. The research costs consist of depreciation of Petitioner's library, which he has collected over a period of many years (PX 109). Petitioner did not provide any documentation or itemized receipts showing the actual cost of his books; instead, he provided a handwritten inventory of his library containing estimated fair market values.

Petitioner also included the costs, such as typing service and printing costs, associated with writing two books, which were published in 1999 (PX 113, PX 115 and PX116).

Petitioner's claimed deduction of \$7,443 in un-reimbursed job expenses, consisting of seminars, travel, lodging, meals and expenses. To substantiate his expenses, Petitioner submitted cancelled checks and program brochures for domestic conferences, as well as receipts for meals and lodging in Africa (RX 202, RX 217 and PX 130). Respondent conceded the business expenses incurred for attending a lecture series in Ghana, subject to Petitioner converting the costs on his receipts to U.S. dollars, and linking the expenses to a business purpose. Respondent also conceded the cost of attending the ANKH conference in Philadelphia, PA, which was substantiated by two cancelled checks, and a conference brochure bearing the same dates (PX 129).

Petitioner's claimed deduction of \$7,443 also includes expenses associated with transportation to and from students' homes. Petitioner is not required by his employer to use his vehicle. To substantiate his expenses, Petitioner provided receipts for car repair service and gasoline, but his documents are not linked to any travel log or schedule identifying when the car was used for business purposes.

D. Schedule C Loss

In addition to his duties as a professor, Petitioner also makes and sells greeting cards. For tax year 2001, Petitioner claimed \$1,862 in business losses (RX 204). Petitioner provided a receipt for printing, but the invoice was dated September 29, 2000 (PX 114). Petitioner provided no documentation substantiating his expenses for legal and professional services or travel/lodging costs associated with his greeting card business.

E. Schedule E Losses

Petitioner claimed \$10,852.06 in losses stemming from rental property located at 1301 Delaware Ave, SW in Washington, D.C., and from royalties and expenses from book publications (RX 205). Respondent disallowed Petitioner's Schedule E losses in full because Petitioner failed to substantiate them with sufficient documentation (RX 222). Petitioner did provide cancelled checks from Verizon and AT&T; however, these expenses were not claimed on his Schedule E. Petitioner also claimed deductions for the cost of producing two books, one that was published in 1999, and the other in 2004 (PX 113). To substantiate his costs, Petitioner provided checks for Pepco and Washington Gas, presumably for utilities used during the production, however, no invoices are attached showing Petitioner made payment with the intent to cover the costs represented (PX 119 and RX 216). Many of his checks for typing costs are written to individual persons, or to cash (PX 130 and RX 217). Finally, Petitioner provided no

documentation to support legal/professional fees, insurance, cleaning and maintenance, or supplies deducted on his Schedule E (RX 205).

III. DISCUSSION AND CONCLUSIONS OF LAW

Petitioner challenges OTR's assessment of an income tax deficiency stemming from information that the Petitioner provided on his 2001 Individual Income Tax Return. The deficiency resulted from deduction taken by the Petitioner but were denied by the Respondent.

Generally, deductions for personal income taxes allowed under Title 47, Chapter 18 of the D.C. Official Code "shall be the same (and to the same extent) as the deductions allowed by the Internal Revenue Code of 1986 on federal individual or fiduciary income tax returns." D.C. Official Code § 47-1803.03(b). Further, deductions are not allowed for personal, living or family expenses. D.C. Official Code § 47-1803.03(d)(1).

The record-keeping requirements to support deductions allowed state:

Every person upon whom the duty is imposed by this chapter to file any applications, returns, or reports or who is liable for any tax imposed by this chapter shall keep such records, render under oath such statements, and comply with such rules and regulations as the Mayor from time to time may prescribe. Whenever the Mayor deems it necessary, he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as he believes sufficient to show whether or not such person is liable to tax under this chapter and the extent of such liability.

D.C. Official Code § 47-1812.02.

While courts typically "focus on the 'settled rule that tax laws are to be strictly construed against the state and in favor of the taxpayer,'" "the Supreme Court has differentiated deductions from other sorts of tax provisions under 'the 'familiar rule' that 'an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed

deduction is on the taxpayer.'" Sch. St. Assoc. Ltd. P'ship v. District of Columbia, 764 A.2d 798, 805 (D.C. 2001) (internal citations omitted). Further, see Doudney v. Comm'r, T.C. Memo 2005-267, 2005 Tax Ct. Memo LEXIS 269* 11-12, which states that deduction:

As a matter of legislative grace, the taxpayer must clearly demonstrate entitlement to the claimed deductions. A taxpayer must keep records adequate to allow the Commissioner to establish the amount of his deductions...A taxpayer must also produce those records upon request for inspection by authorized [tax authorities]. We are not required to accept an interested party's self-serving testimony that is uncorroborated by persuasive evidence.

(Internal citations omitted.)

A. Medical Expenses

Under I.R.C. §213,

- (a) There shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent ... to the extent that such expenses exceed 7.5 percent of adjusted gross income.
- (d)(1) The term "medical care" means amounts paid –
 - (A) for the diagnosis, cure, mitigation, treatment, or prevention of disease...
 - (D) for insurance ... covering medical care referred to in subparagraph (A)

As previously discussed, during the Sept. 20 hearing, Respondent conceded to a partial deduction for the cost of health and dental insurance, as well as any prescriptions paid for out-of-pocket by Petitioner and substantiated with checks/receipts. Respondent's assessment should be amended to reflect this concession. Petitioner's claim for life insurance, however, does not fall under the definition of "medical care" as set forth in I.R.C. §213(d). Thus, OTR properly disallowed life insurance as a medical expense.

B. Charitable Contributions

Under I.R.C. § 170 and its implementing regulations, deductions for charitable contributions shall be allowed as defined in I.R.C. § 170(c). I.R.C. § 170(a). Deductions for charitable contributions are allowed where the taxpayer meets the requirements of 26 C.F.R. § 1.170A-13, which prescribes the regulations for "recordkeeping and return requirements for deductions for charitable contributions." Taxpayers who make charitable contributions of property other than money need to obtain a receipt showing specific information set forth in § 1.170A-13(b). Where obtaining a receipt is not practical (e.g. property is deposited at a drop site), the taxpayer "shall maintain reliable written records with respect to each item of donated property that includes the information required by (b)(2)(ii)."

§ 1.170A-13(b)(2)(ii) requires written records include, *inter alia*:

- (A) The name and address of donee organization to which the contribution was made
- (B) The date and location of the contribution
- (C) A description of the property in detail reasonable under the circumstances (including the value of the property)...
- (D) The fair market value of the property at the time the contribution was made, the method utilized in determining the fair market value, and, if the valuation was determined by appraisal, a copy of the signed report of the appraiser.

If the taxpayer is claiming a deduction in excess of \$5,000, the deduction will not be allowed unless the taxpayer complies with the substantiation requirements of § 1.170A-13(c)(2): (1) obtaining a qualified appraisal; (2) attaching a fully completed appraisal summary to the tax return; (3) maintaining records containing the information set forth in (b)(2)(ii) discussed above.

Petitioner has not proven that he is entitled to a deduction for his non-cash charitable contributions. Assuming CDs are a depreciable asset, which can be deducted as a charitable

contribution,² Petitioner may not take a deduction where he estimates the fair market value of the CDs to calculate the depreciation. Petitioner has claimed \$9,704.98 in depreciation deductions for the CDs alone. Not only has Petitioner not complied with the substantiation requirements of § 1.170A-13(c)(2) by obtaining a qualified appraisal, he has failed to provide receipts showing the actual cost of the CDs purchased. Although Petitioner has provided a number of cancelled checks to Simba Records and African Music Depot, the purpose of these purchases cannot be ascertained without receipts showing the CDs purchased and some type of documentation showing these CDs were used in the production of Petitioner's radio show.

Further, Mr. Farinha based his decision to disallow the claimed charitable deductions on I.R.C. 170(f)(3)(A):

In the case of a contribution (not made by a transfer in trust) of an interest in property which consists of less than the taxpayer's entire interest in such property, a deduction shall be allowed under this section only to the extent that the value of the interest contributed would be allowable as a deduction under this section if such interest had been transferred in trust. For purposes of this subparagraph, a contribution by a taxpayer of the right to use property shall be treated as a contribution of less than the taxpayer's entire interest in such property.

Nothing in the record reflects the Petitioner actually contributed the CDs (for which he claimed depreciation deductions) to the radio station. Thus, Respondent appropriately disallowed Petitioner's claimed deductions for the depreciation of CDs.

Further, Petitioner estimated all costs incident to the production of his radio show including transportation, parking and maintenance -- in other words he provided no supporting documentation to substantiate his expenses. Although Petitioner submitted several credit card

² I.R.C. §167 states "there shall be allowed as a depreciation deduction a reasonable allowance for wear and tear (including a reasonable allowance for obsolescence) -- (1) of all property used in the trade or business, or (2) of property held for the production of income. It is unclear if using a personal music collection for the production of a radio show constitutes property used in a "trade or business".

statements, and checks for payment of credit card bills, again, there is no way to ascertain what the payment was intended for, or what charges were made.

Thus, Respondent also properly disallowed Petitioner's deductions for non-cash charitable contributions.

C. Job Expenses

Generally, trade or business expenses are deductible under I.R.C. § 162:

- (a) In general. There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business, including --
 - (1) a reasonable allowance for salaries or other compensation for personal services actually rendered;
 - (2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business
 - (3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

An ordinary expense is one that is common and acceptable in the particular business. Welch v. Helvering, 290 U.S. 111, 113-14 (1933). An expense is considered necessary when it is appropriate and helpful in carrying on a trade or business. Heineman v. Comm'r, 82 T.C. 538, 543 (1984).

Ordinarily, taxpayers do not have to substantiate expense account information, except, *inter alia*, where (1) a taxpayer is not required to account or does not account to his employer; or (2) the taxpayer has expenses that exceed the amount the employer has reimbursed him/her.

Records to substantiate such expenses must “be sufficient to enable the Commissioner to correctly determine income tax liability.” 26 C.F.R. § 1.162-17(d)(2). The burden of proof is on the taxpayer, who can substantiate his expenses by keeping detailed records of transportation, entertainment, travel, etc. If no records are available, the taxpayer may provide secondary sources of information and evidence (i.e. plane fares on a given day, hotel bills, etc.). 26 C.F.R. § 1.162-17(d)(3). However, when a deduction is questioned by the taxing authority, a taxpayer must provide adequate substantiation of the expenses claimed.

As previously stated, Petitioner claimed deductions for several types of business expenses including travel expenses, conferences and transportation to and from students' homes. Respondent has conceded the registration costs for the ANKH conference in Philadelphia, PA (PX 129 and PX 110 (check #s 3553, 3554)).³ Further, Petitioner provided a program for the Unitar Workshop in New York City, along with an itemized credit card statement for Greyhound and Crowne Plaza Hotel for the same dates (PX 126).⁴ With respect to the Unitar Workshop, Petitioner has adequately substantiated his expenses, and the aforementioned deductions should be allowed.

Respondent also conceded the costs of meals and lodging associated with a lectures series in Ghana if Petitioner can obtain the values on the receipts in U.S. Dollars (See PX 130 and RX 217).⁵ Note, Petitioner also provided itineraries/receipts for air travel (along with other miscellaneous receipts) to Ghana in 1998, 1999 and 2000 (PX 118). These costs are not deductible in tax year 2001, and thus, are appropriately disallowed.

Expenses associated with car repairs were also appropriately disallowed by Respondent. Petitioner stated he used his automobile to meet with students at their homes off-campus. He has

³ The total amount of check 3553 and 3554 is \$235 (PX 110).

⁴ The total amount of these two charges is \$316.01 (PX 118).

⁵ The receipts referred to include those for VAT Service and Loma Snacks in Accra, dated in 2001.

provided multiple receipts for car repairs from various tax years, only some of which were paid in tax year 2001 (PX 118). Even if all were paid in 2001, however, using an automobile to meet with students off-campus is not an "ordinary" or "necessary" business expense required to carry on Petitioner's trade or business within the meaning of I.R.C. §162.

I.R.C. §262 states "except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses." Further,

To show that an expense was not personal, the taxpayer must show that the expense was incurred primarily to benefit his business and that there was a proximate relationship between the claimed expenses and the business.

Davis v. Comm'r, T.C. Memo 2006-272 (2006), quoting Walliser v. Comm'r, 72 T.C. 433 (1979).

In the Davis case, the taxpayer claimed she used her vehicle for travel to business appointments and events. To substantiate her deductions, Taxpayer provided a computer report that she prepared in connection with the examination of her return. Davis, supra at 35-37. The court held Taxpayer did not satisfy the "adequate records" standard, as she did not provide any "documentary evidence such as receipts, paid bills, or other direct evidence ... [nor did Taxpayer present] a log book or other similar record made at or near the time of the expenditures." Id.

Similarly, Petitioner has not provided any documentation related to the use of his automobile in connection with his trade or business. Aside from the vague reference to visiting students off-campus, Petitioner has not stated any other business use for his automobile, nor did he attempt to show his primary use of such automobile was for business purposes. Additionally, Petitioner has not provided a log book, or other documentation required to ascertain the actual amount of his expenses. Thus, OTR properly disallowed expenses paid for Petitioner's automobile.

Petitioner also claimed \$12,700 in research expenses as miscellaneous deductions. Certain research expenses are deductible as provided in I.R.C. § 174, however, this deduction is only for "expenditures incurred in connection with the taxpayer's trade or business which represent research and development costs in the experimental or laboratory sense ... the term research or experimental expenditures does not include expenditures for ... research in connection with literary, historical, or similar projects." 26 C.F.R. §1.174-2(a). Tax Auditor Michael Farinha disallowed Petitioner's claimed deductions for research expenses because the copies of checks provided by the Petitioner lacked any corresponding documentation (i.e. receipts, invoices, etc.).

However, even if Petitioner's expenses were substantiated with some form of documentation, his research expenses would be disallowed under I.R.C. §174 as explained in 26 C.F.R. §1.174-2(a). Thus, Respondent appropriately disallowed Petitioner's research costs as well.

D. Schedule C Losses

Under I.R.C. § 165, losses are allowed as a deduction sustained during the taxable year. Where the loss is taken by an individual, "the deduction...shall be limited [*inter alia*] to losses incurred in a trade or business; or (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business..."

Petitioner claimed a deduction in the amount of \$1,862 for losses arising out of his greeting card business. The only documentation Petitioner provided to substantiate this loss is an invoice from International Graphics Printing service from September 2000. The totals on this invoice do not reflect any of the deductions claimed on his Schedule C. Such claimed deductions, which are not substantiated, include legal and professional fees, advertising, or

anything else linking the losses to his business activities. Thus, Respondent properly disallowed deductions on Petitioner's Schedule C.

E. Schedule E Losses

Petitioner claimed \$10,852.06 in losses on his Federal Schedule E, filed with his 2001 D.C. Tax Return. Petitioner identified a rental property located at 1301 Delaware Ave. S.W., Washington, D.C. for which he claimed deductions in the amount of \$4,045.00. He provided Respondent with a number of cancelled checks for Verizon and AT&T, however, these expenses were not claimed on his Schedule E. Thus, Respondent properly denied losses arising out of this rental property.

Additionally, Petitioner claimed a deduction for supplemental loss from royalties, and expenses in producing books in the amount of \$6,807.06. Petitioner provided no documentation for tax year 2001 regarding royalties, and one of the books for which he seeks production costs was published in 1999. As Tax Auditor Farinha stated in his Audit Report, these expenses are required to be capitalized under I.R.C. § 263A.⁶ Even if the production costs were deductible, the substantiation provided is inadequate to ascertain the costs Petitioner claimed on his Schedule E. Further, the costs for producing the book published in 1999 would not be deductible

⁶ 26 C.F.R. §1.263A-2(a)(2)(ii)(a)(1) explains the non-deductibility of certain property (books) produced by the taxpayer: The costs of producing and developing books (including teaching aids and other literary works) required to be capitalized under this section include costs incurred by an author in researching, preparing, and writing the book. (However, see section 263A(h) [\[26 USCS § 263A\(h\)\]](#), which provides an exemption from the capitalization requirements of section 263A [\[26 USCS § 263A\]](#) in the case of certain free-lance authors.) In addition, the costs of producing and developing books include prepublication expenditures incurred by publishers, including payments made to authors (other than commissions for sales of books that have already taken place), as well as costs incurred by publishers in writing, editing, compiling, illustrating, designing, and developing the books. The costs of producing a book also include the costs of producing the underlying manuscript, copyright, or license. (These costs are distinguished from the separately capitalizable costs of printing and binding the tangible medium embodying the book (e.g., paper and ink)). See § 1.174-2(a)(1), which provides that the term research or experimental expenditures does not include expenditures incurred for research in connection with literary, historical, or similar projects

in tax year 2001. Thus, Respondent properly disallowed losses claimed from book expenses as well.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this ____ day of June, 2007:

ORDERED, that the deductions claimed by Petitioner on his 2001 D.C. Income Tax Return, and not previously conceded to by Respondent during the hearing on said matter, were properly disallowed; and it is further

ORDERED, that this petition is remanded to Respondent, OTR, for the re-calculation of Petitioner's tax deficiency in compliance with this Order; and it is further

ORDERED, that appeal rights of any person aggrieved by this Order are set forth below.

June 4, 2007

/s/ _____
Janet James Mahon
Principal Administrative Law Judge